



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 7, 1998

Mr. John Steiner
Division Chief
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR98-0052

Dear Mr. Steiner:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111716.

The City of Austin (the "city") received a request for information concerning an incident involving the requestor's client. You indicate that the front page information concerning this incident has already been disclosed to the requestor.¹ You assert that the remaining information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Your correspondence refers to Open Records Decision No. 452 (1986) at 4, which states that a governmental body must provide "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." You also cite to Open Records Decision No. 555 (1990), which concluded a governmental body had shown litigation was reasonably anticipated by showing that a former employee had filed complaints of discrimination with the governmental body, that the employee had hired an attorney, and that this attorney had threatened to sue the governmental body.

¹We note that section 552.108(c) provides that "basic information about an arrested person, an arrest, or a crime" is not excepted from disclosure. Front page offense report information must generally be disclosed, since this type of information provides basic information about the allegations. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (front page offense report information is generally considered public). We assume that the "first page" copy that was released contains the front page offense report information.

You submitted to this office the request letter seeking information about the incident. The requestor, an attorney, asserted in his letter that his client had been maced by police officers. He asked that the city investigate the incident and provide information concerning the incident. However, the city has supplied no information showing that the requestor has threatened suit against the city. We believe that this situation is similar to that addressed in Open Records Decision No. 361 (1983). In that situation, the governmental body rejected an applicant for employment, who then hired an attorney. The attorney investigated the situation and sought information from the governmental body as to why his client's application was rejected. This office determined that the governmental body in that situation did not show that litigation was reasonably anticipated. *Id.* Thus, you have not shown the applicability of section 552.103(a).

You have asserted that section 552.108 protects the records at issue from disclosure. Section 552.108(a) provides:

(a) Information held by an law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from public disclosure]...if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state

You assert that the report at issue is excepted from disclosure because "[t]he requested records have not resulted in a final conviction or a deferred adjudication."

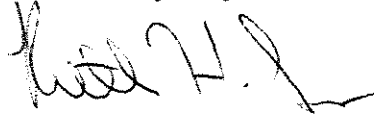
Generally, a governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977). You have not stated that the requested information pertains to an ongoing criminal investigation or prosecution or

explained how its release would interfere in some other way with the detection, investigation, or prosecution of crime.

A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in some type of a final result other than conviction or deferred adjudication. It is not clear to this office, nor have you explained, how or if the investigation has concluded. Since you have not shown the applicability of section 552.108 to the records at issue, you must release the information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue *under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records.* If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written over a horizontal line.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 111716

Enclosures: Submitted documents

cc: Mr. Bobby R. Taylor
1709 E. MLK, Jr. Boulevard
Austin, Texas 78702
(w/o enclosures)